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POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Complaint on Sunday
and Holiday Collections

Docket No. C2001-1

REPLY OF THE UNITED STATES POSTAL SERVICE TO
DOUGLAS F. CARLSON ANSWER IN OPPOSITION TO
POSTAL SERVICE MOTION TO DISMISS
(December 22, 2000)

The Complaint submitted by Douglas F. Carlson in this proceeding was received by the Commission on October 27, 2000. On November 27, 2000, the Postal Service filed its Answer and Motion to Dismiss ("Answer"). The Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss ("Opposition") was received by the Commission on December 14, 2000. The Postal Service hereby offers the following reply to the more salient factual and legal errors included within the Opposition.

A. The Opposition is Factually in Error to Suggest that the Postal Service Has Permanent Service Policies Relating to Outgoing Processing on Specific Holidays

On page 3 of his Opposition, Mr. Carlson erroneously alleges that the information provided by the Postal Service reveals that "the *default* policy is *not* to process outgoing First-Class Mail" on Martin Luther King Jr.'s Birthday, Washington's Birthday, and Columbus Day. While to support this claim Mr. Carlson cites Headquarters memos attached to the Answer, he misinterprets those memos in a way that is indicative of a manifest failure to acknowledge the true import of the information provided by the Postal Service in its earlier pleading. As carefully explained on pages

16-18 of the Answer, the reality is that individual determinations about holiday service are only made with respect to specific holidays in specific years. In Paragraph 29 of the Complaint, Mr. Carlson made an allegation with respect to one year -- 1999. To respond directly to that allegation, the Postal Service provided copies of memos issued in that year. Those memos do not establish permanent general policy for each of the holidays covered; they merely show what guidance was provided for those holidays in memos issued during that year.

In fact, information provided in Attachment B directly contradicts Mr. Carlson's assertion. The first memo included from 1999, dated January 6th, provided guidance for the 1999 observance of Martin Luther King Jr.'s Birthday, and indicated that there would be "no outgoing processing unless approved by the Area Vice President," while also instructing that "[a]ll offices should carefully review their staffing plans for these holidays, and make adjustments as necessary, to ensure that the service needs of their communities are attained with no service disruptions." The last memo issued in 1999, dated December 27th, also related to the King holiday (the 2000 observance), and indicated that the "extent of outgoing mail processing necessary must be determined at the local level based on their mail volume for the same period last year," and still retained the instruction regarding careful review of staffing plans by each office. Whether or not superficial support for Mr. Carlson's categorical claim can be found in the first memo, it is clearly contradicted by the terms of the latter memo.¹

¹ Although issued subsequent to 1999, and therefore not included as part of Attachment B to the Answer, the memos issued in 2000 for Washington's Birthday, Columbus Day, and Veteran's Day, as well as Memorial Day and Thanksgiving, all contain essentially the same language as quoted above from the December 27, 1999

Mr. Carlson's misapprehension in this regard undermines his entire approach to the matter of holiday service. Circumstances change from year to year, and from place to place. Yet rather than accept that changing circumstances could be the root cause of the ebb and flow in holiday service patterns, Mr. Carlson instead postulates a hypothesis that the Postal Service has intentionally attempted to "dodge section 3661 by implementing a national change in policy gradually and quietly." Opposition at 10. This argument, however, is still predicated on a totally false premise -- the tangible occurrence of an identifiable determination to change national policy. Without such an occurrence, section 3661 simply never comes into play.

Complainant does not (and cannot) dispute that over the relevant time period, the details of holiday service have always been subject to the discretion of postal officials to deviate from otherwise applicable guidance on holiday practices. See Opposition at 11. Merely because the exercise of that discretion has resulted in recent years in more facilities that tend not to conduct collections and outgoing processing on certain holidays, one cannot jump to the conclusion that there has been a national change in policy. The policy was that postal officials retain discretion over the level of holiday service, and that policy remains unchanged.

B. The Complainant Fails to Articulate Any Valid Basis upon which the Commission Can Entertain his Complaint

Mr. Carlson's Opposition, like the Complaint itself, is somewhat difficult to disentangle. On the one hand, as discussed below, he seems to grasp the core

memo already provided, in terms both of the local discretion with respect to the extent of outgoing processing, and the general instruction to review staffing plans to meet service needs of the community.

elements of a proper section 3662 service complaint case. On the other hand, he repeatedly insists on placing his ultimate reliance on a very flawed theory of the case, which lacks one of the critical elements upon which jurisdiction can be based. After sorting through things from either direction, however, the ineluctable conclusion is that no sound basis has been presented to entertain his complaint.

To acknowledge where Mr. Carlson comes the closest to articulating at least a plausible *theoretical* basis for a complaint, we can examine page 6 of the Opposition.

On that page, he states:

As I explained in my complaint, the Postal Reorganization Act requires the Postal Service to provide efficient collection services. Complaint at 1, ¶ 3. . . . By filing a complaint on this service problem and explaining the Postal Service's failure to provide the proper level of Sunday and holiday mail service, I have demonstrated a clear belief that I am not receiving postal service in accordance with title 39. After all, I surely am not receiving outgoing mail collection and processing on Sunday.

Similarly, on the next page, he continues:

My complaint satisfies 39 U.S.C. § 3662 because it amply demonstrates that I believe that I am not receiving postal services in accordance with title 39.

Opposition at 7.

Given these statements, one might expect that the complaint would include two very basic elements -- an identification of the relevant policies of the Act, and an allegation (and some attempt at demonstration) that the complainant is not receiving service in accordance with such policies. As Mr. Carlson notes, his complaint in Paragraph 3 identifies one potentially relevant policy of the Act -- the provision of section 403(b) of the Act stating the Postal Service's responsibility "to maintain an efficient system of collection" Sections of the Act containing other potentially

relevant polices -- sections 404(1) (specific power to "provide for the collection, handling, ... of mail") and 3661(a) ("Postal Service shall develop and promote adequate and efficient postal services") -- are likewise identified in Paragraphs 2 and 6 of the Complaint. Strangely enough, however, the Complaint never actually alleges that the service complainant is receiving is not in accord with any of sections 403(b), 404(1), or 3661(a).

This omission is explained by the theory of the case upon which the complainant has chosen to rely:

Relevant to this complaint are two possible ways in which customers may not be receiving postal services in accordance with the policies of title 39. . . . [I]f the Postal Service fails to provide collection services consistent with the POM, a customer may file a complaint. In addition, if the Postal Service changes its policies on collections -- whether by amending the POM, issuing a memo from headquarters, or simply changing actual practice -- without first obtaining an advisory opinion from the Commission, a customer may file a complaint. All issues in this complaint fall under one or both categories of circumstances for which a complaint is proper.

Opposition at 4-5.

The ramifications of this approach are rather startling. Under this theory, even if the Postal Service is providing service in full accordance with the policies of the Act, a section 3662 complaint lies if the Postal Service is merely alleged to have deviated from the guidance set forth in the POM, or if the Postal Service is merely alleged to have changed its policies on collection (however immaterially) without requesting an advisory opinion. In other words, in complainant's opinion, compliance with the actual policies of the Act is totally irrelevant. Regardless of his opinion, however, no statutory basis exists for the Commission to conduct a complaint proceeding beyond those provided for by section 3662, and the terms of that section are expressly limited to interested parties

who believe that they are not receiving postal services in accordance with the policies of title 39. Neither the complainant in this case, nor the Commission, is at liberty to extend that provision beyond its terms.

It is abundantly obvious why the complainant has attempted to ignore the plain language of the Act. Take, for example, Sunday collection and outgoing processing. As quoted above (from page 6 of the Opposition), complainant correctly notes that, after all, he surely is not receiving collection and outgoing processing on Sunday. Complainant, however, has not (and cannot) identify any provision of the Act which establishes that he is entitled to those services on that day. Rather than contend with this gap in his claim, he chooses to ignore the language of section 3662, and to attempt to change the applicable standard from that of compliance with the policies of the Act, to that of compliance with the POM. This attempt must fail.

Ironically, in other portions of the Opposition, complainant himself highlights the fundamental irrelevance of the POM to this dispute. In arguing that mere changes to the provisions of the POM will not moot his complaint, he states:

The issue, then, is the *underlying operational policy* that the Postal Service follows, not POM language per se.

Opposition at 9. Similarly, it is consistency of service with the policies of the Act that must be the issue, not consistency with "POM language per se."² If changes in the

² Perhaps a counterexample illustrates this point more clearly. Would Mr. Carlson advocate that, if a complainant identified a specific policy of the Act and made a compelling showing that the service provided was not in accordance with that policy, the Postal Service should nonetheless be able to defeat such a complaint merely with reference to the POM, noting that regardless of the policies of the Act, the service was fully in accordance with the terms of the POM? It seems improbable. Unlike the POM, the contents of which are set by the Postal Service, it is only Congress that establishes

provisions of the POM would not moot the complaint, then consistency (or lack thereof) with the existing provisions of the POM cannot provide an adequate basis to maintain the complaint initially.

Mr. Carlson's attempts to elevate the *procedures* of subsections 3661(b-c) to a *policy* of the Act are similarly flawed. See Opposition at 4-5. Once again, this approach ignores the language of section 3662. Section 3662 provides that interested parties may lodge a complaint if they believe that they are "receiving postal services" that are not in accordance with the policies of the Act. The clear focus is on the levels of postal services received by the customer, not the actions taken by the Postal Service to provide those levels of service. In contrast, the approach postulated by the complainant would once again open the door for complaints in which the issue of actual conformance of the service received with the policies of the Act is irrelevant. As an example, consider a hypothetical case of a labor activist who believes that the Postal Service has failed to afford the employees who provide his mail services certain procedural protections provided for in the Act, and wishes to complain to the Commission that the Postal Service has failed to comply with the policies of the Act. Under Mr. Carlson's apparent view that it is the actions or omissions of the Postal Service in the course of providing the service which may be at issue, and not necessarily the underlying level of the service itself, jurisdiction for such a complaint would be consistent with his theory. In fact, however, it is perfectly clear that section 3662 was never intended to accommodate such complaints, and that is why the service

the policies of title 39, and it is only with reference to those policies that Congress has authorized the Commission to entertain service complaints.

complaint provision is limited to instances in which the matter at issue is the conformance of the actual service received with statutory policies.³

The breadth of the potential impact of Mr. Carlson's over-extension of the relationship between sections 3661(b-c) and 3662 is particularly staggering, given his notions of the intended scope of sections 3661(b-c). Recall the language quoted earlier:

In addition, if the Postal Service changes its policies on collections -- whether by amending the POM, issuing a memo from headquarters, or simply changing actual practice -- without first obtaining an advisory opinion from the Commission, a customer may file a complaint.

Opposition at 5. While Mr. Carlson tried (Opposition at 16-17) to refute the obvious conclusion that this would result in egregious micromanagement, his attempts are not convincing. Any attempt to address different holidays differently, and leave substantial discretion to local managers, would not only subject the Postal Service and the Commission to continuing litigation of a section 3661 proceeding for each holiday, but also would not even satisfy his concerns. See Opposition at 16-17. His approach is grounded in a rigidity that makes no operational sense.

It is ultimately on these grounds, if not others, that his request for relief must fail. Let us accept for purposes of argument that the relevant statutory policies require

³ If Mr. Carlson believes that the Postal Service has changed service levels without complying with applicable procedures, it would appear that he has two available options. As one option, if he wants to focus his challenge on alleged procedural irregularities, he would need to find a forum with jurisdiction over challenges that the Postal Service has acted unlawfully by failing to follow applicable procedures. Alternatively, as a second option, if he wants to focus on substance and file a section 3662 complaint with the Commission, he would need to show how the existing service fails to comply with the policies of the Act. In this instance, Mr. Carlson has done neither.

“adequate and efficient” mail service, section 3661(a), and an “efficient system of collection, sorting, and delivery of the mail nationwide,” section 403(b)(1). The common element of both provisions is efficiency. One can easily envision two scenarios by which holiday operations could cause inefficiency. On the one hand, if carriers are paid to make collection runs which yield no appreciable volume, and clerks are called in to run processing operations when the minimum startup volumes are not available, such practices could fairly be considered to raise the specter of inefficiency. On the other hand, if holiday collection and processing are curtailed to the point that the carryover volumes cannot be handled without disrupting operations on the day after the holiday, this could likewise suggest the potential for inefficiency. Either of these situations would offer a fairly unambiguous suggestion regarding the efficiency of holiday service.

Moreover, these scenarios also speak to the other element mentioned -- the “adequacy” of the service. In the first scenario, the service could be characterized as actually more than adequate. In the second scenario, it is just as easy to reach the conclusion that the level of service is less than adequate. At least to some extent, therefore, both elements of the statutory policy can be addressed by attempting to match the supply of holiday operational activities with the demand for holiday operational activities.

As noted at pages 17-18 of the Postal Service’s Answer, if there has been any trend in recent years regarding holiday mail service, it would be in the direction of allowing more pragmatic decisions with respect to particular holidays, and with respect to local conditions. That portion of the Answer discusses in some detail the rationale behind this trend. The discussion, although not necessarily couched in the same terms,

shows why local officials are generally in the best position to attempt the exercise of matching supply and demand. Coupled with explicit guidance to carefully evaluate the service needs of their communities, and to set staffing plans to ensure that those service needs are attained, it is difficult to envision an approach to holiday service that is any more likely to achieve the dual policy goals of efficiency and adequacy.

There is also, moreover, a larger context in which this type of balancing must be addressed. Holiday resource issues cannot necessarily be treated in a vacuum. Postal managers are under constant pressure to do more with less -- to be more productive. If less staff resources are to be available, it is necessary to determine how adjustments can be made that would have the least effect on overall service. Recall that the statutory policies relate to service overall, not holiday service specifically. The above-described trend in the treatment of holiday is consistent with efforts to have the operational staff that is at the best level to evaluate tradeoffs across a wide spectrum of field operations be the ones who are generally given the responsibility to enhance efficiency while reviewing and meeting the mailing needs of the community. Clearly, it is rational for that practice to extend to holiday service as well as other aspects of service.

C. Complainant Offers No Credible Reason to Excuse a Twelve-Year Delay in his Challenge to the 1988 Change in Sunday Collection Policy

Mr. Carlson has only the following to offer on why his complaint with respect to the 1988 change in Sunday collection policy should not be dismissed as untimely:

Even though the Postal Service took action on Sunday collections 12 years ago, the Commission is not barred from issuing a public report explaining the pattern of service cuts that began in 1988 and continues in 2000.

Opposition at 19. Perhaps Mr. Carlson might be right if he had even bothered to attempt to show (much less succeeded in showing) why an absence of Sunday collections and processing actually violates any of the policies of the Act. Instead, he chooses to rest his complaint on the (uncontested) facts that the change was unaccompanied by a section 3661 request to the Commission, and that the change caused actual operational practices to deviate from the POM. Both of these facts have been true since 1988. Even if alleging these facts constituted adequate grounds for a complaint, which they do not, common sense suggests that there has to be some limit on the amount of time that a potential complainant can sit on his hands and wait to bring his challenge.

Perhaps more to the point, what would be the purpose of a proceeding leading to a public report on this matter? Like it or not, the world has changed since 1988. Routine Sunday collections are as much a part of history as the twice-a-day deliveries that were routine on some routes many more years ago. This should come as no surprise to the mailers, to the Commission, or even to Mr. Carlson. With the myriad of difficulties and challenges facing our nation's postal systems, it would be little short of irresponsible to force time, effort, and resources to be devoted to such a pointless exercise.

Therefore, the Postal Service respectfully renews its requests that its motion to dismiss the complaint be granted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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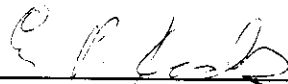
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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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